

may not subtract leave from an employee's entitlement to leave under paragraph (a) of this section unless the agency has obtained confirmation from the employee of his or her intent to invoke entitlement to leave under paragraph (b) of this section. An employee's notice of his or her intent to take leave under § 630.1207 may suffice as the employee's confirmation.

[58 FR 39602, July 23, 1993, as amended at 61 FR 64452, Dec. 5, 1996; 65 FR 26486, May 8, 2000; 76 FR 60704, Sept. 30, 2011]

#### § 630.1204 Qualifying exigency leave.

(a) An employee may take FMLA leave while the employee's spouse, son, daughter, or parent (the "covered military member") is on covered active duty or call to covered active duty status for one or more of the following qualifying exigencies:

(1) *Short-notice deployment.* To address any issue that arises from the fact that a covered military member is notified of an impending call or order to covered active duty 7 or fewer calendar days prior to the date of deployment. Leave taken for this purpose can be used for a period of up to 7 calendar days beginning on the date a covered military member is notified of an impending call or order to covered active duty.

(2) *Military events and related activities.* (i) To attend any official ceremony, program, or event sponsored by the military that is related to the covered active duty or call to covered active duty status of a covered military member; and

(ii) To attend family support or assistance programs and informational briefings sponsored or promoted by the military, military service organizations, or the American Red Cross that are related to the covered active duty or call to covered active duty status of a covered military member.

(3) *Childcare and school activities.* (i) To arrange for alternative childcare when the covered active duty or call to covered active duty status of a covered military member necessitates a change in the existing childcare arrangement for a child;

(ii) To provide childcare on an urgent, immediate need basis (but not on a routine, regular, or everyday basis)

when the need to provide such care arises from the covered active duty or call to covered active duty status of a covered military member for a child;

(iii) To enroll in or transfer to a new school or day care facility a child, when enrollment or transfer is necessitated by the covered active duty or call to covered active duty status of a covered military member; and

(iv) To attend meetings with staff at a school or a daycare facility, such as meetings with school officials regarding disciplinary measures, parent-teacher conferences, or meetings with school counselors, for a child when such meetings are necessary due to circumstances arising from the covered active duty or call to covered active duty status of a covered military member.

(v) For purposes of paragraphs (a)(3)(i) through (a)(3)(iv) of this section, "child" means a biological, adopted, or foster child, a stepchild, or a legal ward of a covered military member, or a child for whom a covered military member stands in loco parentis, who is either under age 18, or age 18 or older and incapable of self-care because of a mental or physical disability at the time the FMLA leave is to commence.

(4) *Financial and legal arrangements.*

(i) To make or update financial or legal arrangements to address the covered military member's absence while on covered active duty or call to covered active duty status, such as preparing and executing financial and health care powers of attorney, transferring bank account signature authority, enrolling in the Defense Enrollment Eligibility Reporting System (DEERS), obtaining military identification cards, or preparing or updating a will or living trust; and

(ii) To act as the covered military member's representative before a Federal, State, or local agency for purposes of obtaining, arranging, or appealing military service benefits while the covered military member is on covered active duty or call to covered active duty status, and for a period of 90 days following the termination of the covered military member's covered active duty status.

(5) *Counseling.* To attend counseling provided by someone other than a health care provider for oneself, for the covered military member, or for a child as defined in paragraph (a)(3)(v) of this section, provided that the need for counseling arises from the covered active duty or call to covered active duty status of a covered military member.

(6) *Rest and recuperation.* To spend time with a covered military member who is on short-term, temporary, rest and recuperation leave during the period of deployment. Eligible employees may take up to 5 days of leave for each instance of rest and recuperation.

(7) *Post-deployment activities.* (i) To attend arrival ceremonies, reintegration briefings and events, and any other official ceremony or program sponsored by the military for a period of 90 days following the termination of the covered military member's covered active duty status; and

(ii) To address issues that arise from the death of a covered military member while on covered active duty status, such as meeting and recovering the body of the covered military member and making funeral arrangements.

(8) *Additional activities.* To address other events that arise out of the covered military member's covered active duty or call to covered active duty status, provided that the agency and employee agree that such leave qualifies as an exigency, and that they agree to both the timing and duration of such leave.

(b) An employee is eligible to take FMLA leave because of a qualifying exigency when the covered military member is on covered active duty or call to covered active duty status as a member of a regular component of the Armed Forces, or when the covered military member is on covered active duty or call to covered active duty status in support of a contingency operation pursuant to one of the provisions of law identified in the definition of *covered active duty or call to covered active duty status* as either a member of the reserve components (Army National Guard of the United States, Army Reserve, Navy Reserve, Marine Corps Reserve, Air National Guard of the United States, Air Force Reserve, and Coast Guard Reserve), or a retired

member of the Regular Armed Forces or Reserve.

(c) For those called to covered active duty status in support of a contingency operation—

(1) A call to active duty for purposes of leave taken because of a qualifying exigency refers to a Federal call to active duty. State calls to active duty are not covered unless under order of the President of the United States pursuant to one of the provisions of law identified in paragraph (b) of this section in support of a contingency operation.

(2) For such members, the active duty orders of a covered military member will generally specify whether the servicemember is serving in support of a contingency operation by citation to the relevant section of title 10 of the United States Code or by reference to the specific name of the contingency operation, or both. A military operation qualifies as a contingency operation if it:

(i) Is designated by the Secretary of Defense as an operation in which members of the Armed Forces are or may become involved in military actions, operations, or hostilities against an enemy of the United States or against an opposing military force; or

(ii) Results in the call or order to, or retention on, active duty of members of the uniformed services under section 688, 12301(a), 12302, 12304, 12305, or 12406, or chapter 15 of title 10 of the United States Code, or any other provision of law during a war or during a national emergency declared by the President or Congress. (See 10 U.S.C. 101(a)(13).)

[76 FR 60704, Sept. 30, 2011]

**§ 630.1205 Intermittent leave or reduced leave schedule.**

(a) Leave under § 630.1203(a) (1) or (2) of this part shall not be taken intermittently or on a reduced leave schedule unless the employee and the agency agree to do so.

(b) Leave under § 630.1203(a)(3) or (4) may be taken intermittently or on a reduced leave schedule when medically necessary, subject to §§ 630.1207 and 630.1208 (b)(6). Leave under § 630.1203(a)(5) may be taken on an intermittent or reduced leave schedule basis, subject to §§ 630.1207 and 630.1209.